

CHAPTER 3 ESTABLISHING AND MAINTAINING RABs

3-1. Scope.

a. This chapter presents the procedures for establishing and maintaining RABs at FUDS properties for authorized FUDS HTRW and OE projects. These RABs are to serve as forums for discussion and exchange of information between agencies and affected communities. They provide an opportunity for stakeholders to have a voice and actively participate in the review of technical documents, to review restoration progress, and to provide individual advice to decision makers regarding restoration activities. The TAPP program, which supports RABs and TRCs, is also discussed.

b. The procedures presented in this chapter apply to all HQUSACE elements and all USACE Commands having responsibility for establishing and maintaining RABs at FUDS projects. These procedures apply to PRP projects only when, based on a formal PRP agreement, USACE serves as the lead for execution of the response actions and agrees to establish and maintain a RAB. RABs will be established at all NPL FUDS properties and NPL-proposed FUDS properties. Where FUDS TRCs exist, they will be modified to become RABs, IAW paragraph 3-4d . RABs will be established at all other FUDS projects only where there is sufficient, sustained community interest as determined by the PM. Such interest is evidenced by any one of the following:

- (1) A state, federal, or local government requests that a RAB be formed.
- (2) Fifty local residents sign a petition requesting that a RAB be formed.
- (3) The district Commander where the PM resides determines that a RAB is needed.

For FUDS OE projects, the RAB process will be initiated when the EE/CA is initiated, provided any one of the criterion listed above exists. For FUDS HTRW projects, the RAB process will be initiated when the RI/FS is initiated, provided any one of the criterion listed above exists.

3-2. Determining the Need for a RAB.

a. It is the responsibility of the district Commander where the PM resides to determine when there is sufficient, sustained community interest to establish a RAB. When more than one FUDS project is located within a 5- to 10-mile range of each other, a regional RAB covering both FUDS projects will be considered. When a FUDS project is located near an installation that already has an established RAB, the PM should coordinate with the installation for inclusion of the FUDS restoration activities in their RAB. In addition, regional joint RABs covering restoration activities being conducted by the different services may be an option for inclusion of

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the FUDS project. This option should be considered and evaluated by the PM as appropriate. Contact HQUSACE, Directorate of Military Programs, for further information regarding regional joint RABs. When there is no existing RAB near the FUDS project, the PM will determine that at least one of the three criteria listed in paragraph 3-1b exists. Once this requirement has been met, various community involvement techniques should be used to determine whether or not a RAB should be formed. The minimum steps that must be followed are as follows:

(1) Review correspondence files to determine what community comments have been received regarding the FUDS project or other environmental issues related to the community.

(2) Review media coverage to evaluate the extent, type, and duration of such coverage.

(3) Determine interest of local community members through advertisement and public service announcements.

(4) Conduct interviews with officials and others involved in the environmental restoration process.

(5) Advertise in local newspapers.

(6) Review the CRP to determine if the residents indicated an interest in forming a RAB. Send letters and fact sheets to individuals on the mailing list to solicit their interest.

b. Local surveys also can be conducted to determine interest. If soliciting for community interest reveals that there is none, evidence of such solicitation and the fact that there was no expressed interest will be documented. That documentation will be included in the CRP and the information repository.

c. If no interest is expressed in forming a RAB, the PM will document that fact in a memorandum for record (MFR) which will be signed by the district Commander. A copy of this MFR will be forwarded to the relevant MSC and to HQUSACE, ATTN: CEMP-RF. The PM will reassess every 2 years, or when the FUDS project circumstances change, to determine if interest develops in forming a RAB.

3-3. RAB Responsibilities. The responsibilities of the RAB include:

a. Providing individual advice on environmental restoration issues to USACE and regulatory agencies.

b. Conducting regular meetings, open to the public, at convenient times and locations, in most cases after normal duty hours.

- c. Recording minutes of all meetings and making them available to interested parties.
- d. Encouraging community involvement.
- e. Developing and using a mailing list of interested parties who wish to receive information on the environmental restoration process.
- f. Reviewing and evaluating documents; for example, Archives Search Reports (ASRs), sampling and analysis data, EE/CAs, and other technical documents.
- g. Identifying FUDS project requirements.
- h. Recommending priorities among FUDS projects.
- i. Proposing cleanup levels consistent with planned land use.
- j. Developing a RAB mission statement.
- k. Developing RAB operating procedures.

3-4. Composition of RABs.

a. RABs will be comprised of the PM (or some other, higher-level USACE manager designated by the district Commander), state regulatory agency representatives, other Federal, state and local agencies as appropriate, local and tribal governments as appropriate, and affected members of the local community. The RAB at an NPL FUDS property will also have an EPA representative. At non-NPL FUDS properties, EPA membership will be at the discretion of the EPA Regional Administrator. The PM will ensure that RAB members reflect the diversity of the community.

b. RAB members will be selected in a fair and open manner, as outlined in paragraph 3-5. All selections will be made in cooperation with the appropriate Federal, state, and local regulators and affected community members. The size of the RAB will depend on the complexity of the situation, the number of stakeholders, and the level of community interest. The number of RAB members should be large enough to reflect community diversity, yet small enough to be workable. It is recommended that the RAB consist of no more than 20 members.

c. The RAB will be jointly chaired by the PM (or some other, higher-level USACE manager) and a community representative. The PM co-chairperson and community co-chairperson will share leadership responsibilities. The PM should obtain training in Robert's Rules of Order to ensure that meetings are effectively conducted. The responsibilities of each chairperson, listed in paragraph 3-6, will be defined in the RAB's operating procedures.

d. RABs will meet the requirements of 10 USC 2705(c) of the Defense Environmental Restoration Program statute which required DOD to establish TRCs. Where TRCs or other similar groups already exist, they will be expanded or modified, in consultation with the state and where appropriate EPA, to become RABs, rather than creating a separate board. These modifications will include the selection of additional community representatives, the selection of a community co-chairperson, and the establishment of a policy whereby meetings are open to the public. As a general rule, TRC members should be given preference in obtaining seats on the RAB in order to preserve the continuity of the restoration process. In all cases, the diversity of the current TRC membership should be evaluated to ensure that the RAB is representative of the community's diverse interests.

e. The RAB will remain active until the response alternative(s) for the FUDS property has been selected through the ROD, for HTRW, or the Action Memorandum, for the OE program. During the remedial/removal response action phase, RAB meetings will be held either once a quarter or semi-annually at a minimum. More frequent meetings may be held as appropriate based on the RAB Operating Procedures. The RAB will be disestablished when the remedial/removal response action is complete.

3-5. RAB Formulation and Selection, Announcement, and Training of RAB Members.

a. RAB Formulation. The PM should begin informing and educating the community about the purpose of the RAB and opportunities for membership and participation before any RAB formulation meetings are held. Sample documents that may be used in the RAB formulation process are provided at appendices C, D, E, and F. All community members identified on a local public-participation mailing list should be contacted. This process should be completed in consultation with the state, the EPA, and the existing TRC.

b. Selection of RAB Members.

(1) A selection panel made up of community members will be formed. This panel will recommend the community members who will serve on the RAB. This panel will be organized by the PM, with support from the geographic district PAO, in consultation with EPA, as applicable, and state regulators. Members of the selection panel may not serve as RAB members. The selection panel should represent a cross section of the community and its views. Representatives of minority populations and low-income groups should be included in the process. Panel members can be drawn from the following sources:

- (a) Local residents/community members.
- (b) Current TRC members.
- (c) Local environmental groups/activists, civic groups.

- (d) Business and religious community, school districts.
- (e) Low-income and minority groups.
- (f) Local government, local regulatory agencies.
- (g) Homeowners Associations.
- (h) Native American tribes/tribal governments.
- (i) Landowners of FUDS properties.

(2) The selection panel must reflect the diverse community interests and be made up of community members only. A number of options may be used when forming a selection panel provided that the membership selection process reflects balance and diversity. The PM, in consultation with EPA and the state, may choose any of the following:

- (a) Organize a selection panel of community members to nominate RAB members.
- (b) Identify a neutral facilitator to establish the selection panel.
- (c) Have community representatives choose the members of the selection panel.
- (d) Place paid public notices in the local newspapers asking for volunteers to serve on the selection panel.
- (e) Ask existing community members of the TRC to act as the selection panel.
- (f) Have the PM, the EPA, and the state representatives nominate community members to serve on the selection panel.

(3) The selection panel will identify the diverse community interest groups that need to be represented on the RAB. This process will be carried out with support from and in consultation with the geographic district PAO. Based on this identification, the panel will develop a solicitation process and establish criteria for selection of RAB members.

(4) Once the selection panel has established the selection criteria for RAB membership, the selection process should be initiated. The following selection process is recommended in order to ensure that members are selected from the diverse interest groups and to allow any other interested community members to be considered for RAB membership:

(a) Announce participation opportunities through news releases and paid public notices (see sample at appendix C).

(b) Develop a community interest form to determine community concerns and their interest in participating (see sample format at appendix D).

(c) Establish a time period for receipt of the community interest forms.

(d) Mail letters of invitation (see sample at appendix E), fact sheets (see sample at appendix F), and community interest forms to all community members on the existing mailing list and to the groups identified by the selection panel.

(e) Place fact sheets and community interest forms in information repositories and at other locations where the public may normally look for community information, such as libraries, community centers, supermarkets, etc.

(f) Hold an initial public meeting about the RAB to discuss purpose, member solicitation process, and membership responsibilities; provide fact sheets and community interest forms to meeting attendees.

(5) After the designated solicitation period ends, the selection panel will convene to develop a list of suggested RAB members who reflect the diverse interests of the community. The community interest forms submitted will be used in developing this list. The selection panel will submit the list of suggested RAB members, along with full explanation establishing the fact that the members represent the diverse interest groups of the community, to the PM for the district Commander's approval. The district Commander, in consultation with EPA and state representatives, must accept the list unless it is determined that the diverse community interests are not fully represented. If this determination is made, the district Commander will specify the weaknesses to be corrected. The selection panel will be instructed to develop a new list for review and approval. Once the list is approved, the selection panel will be disbanded.

c. Announcement of RAB Members.

(1) RAB membership should be announced by the geographic district PAO, based on information provided by the PM, in the following manner:

(a) Send letters to the selected RAB members to notify them of their selection. Send news releases to the local newspapers announcing the formation of the RAB and the date of the first meeting.

(b) Send letters to those who submitted community interest forms but were not selected, announcing the names of the RAB members, thanking those not selected for their interest,

encouraging them to attend future RAB meetings, and notifying them that their interest forms will be kept on file in case future membership openings should occur.

(c) Distribute a brief fact sheet announcing the RAB members and meeting schedule and publicly thanking all community members who expressed an interest in RAB participation and encouraging ongoing community attendance and participation at future RAB meetings.

(2) Additions to and deletions from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures discussed in paragraph 3-7. A sample Operating Procedures for RABs is provided at appendix G.

d. Training of RAB Members. RAB members will require some initial orientation to enable them to perform their duties. The PM should work with the state, EPA, and environmental groups to develop methods to inform and educate RAB members. This training may be accomplished at initial RAB meetings or at special orientation sessions. RAB members will be provided instruction on the relative risk process, the budgeting process, and how these affect the sequencing of restoration response actions so that RABs can provide informed advice. Technical support staff from state, Federal, and local agencies should be requested to attend such sessions to provide information and explanation to RAB members. In addition, contractors who are performing work at the FUDS property can provide technical support.

3-6. Member Roles and Responsibilities.

a. USACE Co-Chair. It is the responsibility of the USACE Co-Chair (i.e., the PM or the higher-level USACE manager) to:

(1) Coordinate with the community Co-Chair to prepare and distribute an agenda prior to each RAB meeting.

(2) Ensure that USACE participates in an open and constructive manner.

(3) Ensure that the RAB has the opportunity to participate in the restoration decision process.

(4) Ensure that community issues and concerns related to restoration are addressed when raised.

(5) Ensure that documents distributed to the RAB are also made available to the general public.

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(6) Ensure that an accurate list of interested/affected parties is developed and maintained. This will be done with the assistance of the RAB and the geographic district PAO.

(7) Provide relevant policies and guidance documents to the RAB in order to enhance the RAB's operation.

(8) Ensure that adequate administrative support is provided to the RAB.

(9) Refer issues not related to restoration to appropriate district officials for action.

(10) Report back to the USACE district.

b. Community Co-Chair. It is the responsibility of the community Co-Chair to:

(1) Coordinate with the USACE Co-Chair and RAB community members to prepare an agenda prior to each RAB meeting.

(2) Ensure that community members participate in an open and constructive manner.

(3) Ensure that community issues and concerns related to restoration are raised.

(4) Assist with the dissemination of information to the general public.

(5) Report back to the community.

(6) Serve without compensation.

c. RAB Community Members. It is the responsibility of RAB community members to:

(1) Attend RAB meetings as required by the RAB operating procedures.

(2) Provide individual advice and comments on restoration issues to decision makers.

(3) Represent and communicate community interests and concerns to the RAB.

(4) Act as a conduit for the exchange of information among the community, the USACE district(s), and environmental agencies regarding the restoration program.

(5) Review, evaluate, and comment on documents and other such materials related to restoration activities.

(6) Serve without compensation.

d. State Regulatory Agency Member. It is the responsibility of the state regulatory agency member to:

- (1) Attend RAB meetings as required by the RAB operating procedures.
- (2) Serve as an information, referral, and resource bank for the community, the USACE district, and involved Federal, state, and local agencies regarding restoration activities.
- (3) Review documents and other materials related to restoration.
- (4) Ensure that applicable environmental standards and regulations are identified and addressed by USACE.
- (5) Facilitate flexible and innovative resolutions of environmental issues and concerns.
- (6) Assist in education and training for RAB members.

e. EPA Member. Where EPA participates, it is the responsibility of the EPA members to:

- (1) Attend RAB meetings as required by the RAB operating procedures.
- (2) Serve as an information, referral, and resource bank for the community, the USACE district, and involved Federal, state, and local agencies regarding restoration activities.
- (3) Facilitate flexible and innovative resolutions of environmental issues and concerns.
- (4) Ensure that applicable environmental standards and regulations are identified and addressed by USACE.
- (5) Assist in education and training for RAB members.

3-7. RAB Operations.

a. RAB Operating Procedures.

(1) The RAB is responsible for developing its operating procedures. These procedures should cover attendance requirements, meeting frequency, removing/replacing Co-Chairs and replacing/adding members, terms of service (1- or 2- year terms should be considered), methods for resolving disputes, process for reviewing and responding to public comments, and methods for public participation. These procedures should reflect the fact that all advice provided by the RAB is to be understood to be the advice of the individual RAB members, not consensus advice of the

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RAB. The RAB is not an advisory committee, as that term is used in the Federal Advisory Committee Act (FACA). If consensus advice is determined by the RAB to be necessary, legal counsel should be consulted regarding FACA applicability. A sample Operating Procedures for RABs is provided at appendix F.

(2) Each RAB will develop a brief mission statement that specifies its overall purpose. For example, "The RAB mission is to establish and maintain a forum with all stakeholders for the exchange of information in an open and interactive dialogue concerning the environmental restoration activities at this FUDS property."

b. RAB Support. The PM must ensure that adequate administrative support is provided to establish and operate the RAB. This support will typically include the following:

- (1) Providing meeting facilities, organizing and facilitating public meetings.
- (2) Preparing and distributing meeting minutes, management of RAB mailing lists, mailings, and other routine word-processing tasks.
- (3) Copying/printing and distributing RAB documents, notices, and fact sheets.
- (4) Translating and distributing outreach and other RAB materials.
- (5) Modifying CRPs to incorporate RAB requirements.

3-8. Technical Assistance for Public Participation (TAPP). * The TAPP program provides community members of RABs and TRCs access to independent technical support through the use of Government purchase orders. Community members of a RAB or TRC apply to the USACE district Commander for independent technical assistance in interpreting scientific and engineering issues with regard to the nature of environmental hazards and restoration activities at a FUDS property. The RAB/TRC must demonstrate either that (1) the Federal, state, and local agencies responsible for overseeing environmental restoration at the FUDS property, and available DOD personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained or that (2) the technical assistance is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the FUDS property and community acceptance of environmental restoration activities at the FUDS property. (See appendix H for a copy of the Federal Register notice containing the final rule which explains the TAPP program.)

* The information presented in paragraphs 3-8 through 3-11 is derived, with modifications, from Technical Assistance for Public Participation Policy Implementation Guidance and Restoration Advisory Board Update, U.S. Army Corps of Engineers, 1998.

a. Eligible Applicants. To receive independent technical assistance from USACE under the TAPP program, RABs and TRCs must propose a project and apply to the USACE district Commander responsible for the project management. Only community members (not Government members) of recognized RABs/TRCs are eligible to apply for independent technical assistance from USACE using the TAPP authority. Also, there must be a minimum of three community members, i.e., non-Government members, on a RAB/TRC in order to apply for TAPP. Any request for TAPP must represent the wishes of the majority of the community members, and the RAB/TRC must certify a majority request on the TAPP application.

b. Eligible TAPP Projects. The following types of technical assistance projects related to DERP activities at a FUDS property are eligible for funding by USACE under the TAPP program:

(1) Interpret technical documents - the FUDS program documents each stage of investigation and decision making with technical reports that summarize data and support cleanup decisions. Technical assistance may be provided to review and interpret plans and technical documents such as studies of the FUDS property, risk assessments, and health assessments.

(2) Assess technologies - explain the function and implications of those technologies elected to investigate or clean up a FUDS property (e.g., understand how vapor extraction works and under what conditions the technology is appropriate).

(3) Participate in relative risk evaluations - technical assistance may be provided to help RAB/TRC community members contribute to the relative risk evaluation process for a specific FUDS project(s).

(4) Interpret health implications - interpret the potential health implications of cleanup levels or response technologies or explain the health implications of FUDS property contaminants and exposure scenarios.

(5) Certain types of training - technical training on specific restoration issues may be appropriate in circumstances where RAB or TRC members need education or supplemental information on FUDS restoration projects. (Note: TAPP may be used to obtain training to assist the community in understanding processes, health effects, and alternative technologies or to obtain 40-hour safety training certification to go into the "HOT" zones of cleanup areas. In most cases, Federal or state agency personnel can provide training.)

c. Ineligible TAPP Projects. The following types of technical assistance projects are not eligible for funding by USACE under the TAPP program:

(1) Activities associated with nonrestoration issues, such as compliance, are not eligible for TAPP because such activities are not within the purview of RABs/TRCs.

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(2) Litigation or underwriting legal actions such as paying attorney fees or paying for a technical assistance provider to assist an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the FUDS property.

(3) Political activity and lobbying as defined by Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations."

(4) Other activities inconsistent with the cost principles stated in OMB Circular A-122.

(5) Generation of new primary sampling data, such as well drilling and split sampling.
(Note: USACE, in coordination with the regulatory agencies, is responsible for developing investigation strategies to ensure that potential hazards are adequately characterized. If the RAB or TRC members identify a circumstance where they feel that additional data collection may be necessary, these concerns should be communicated to the USACE Co-Chair of the RAB or TRC or to the appropriate regulatory agency for evaluation.)

(6) Disputes with USACE over remedy selection or any other aspects of the restoration program, or to reopen final Army CERCLA decisions, such as RODs, or conducting disputes with USACE.

(7) Epidemiological or health studies, such as blood or urine testing.

(8) Community outreach efforts, such as reproducing reports, conducting FUDS property tours, renting meeting rooms, and distributing newsletters.

d. TAPP Process.

(1) Step One - Identification of Need. When RAB/TRC community members initially determine a desire for independent technical assistance, they must demonstrate that the technical expertise necessary for the proposed project is not available through the Federal, state, or local agencies responsible for overseeing environmental restoration at the FUDS property or that the selection of an alternate provider will contribute to the environmental restoration activities and the community acceptance of these activities. In determining if the technical assistance may already be available, the RAB/TRC community members must first consider the following sources of assistance:

(a) Federal and state environmental regulatory agency personnel responsible for overseeing the environmental restoration program at the FUDS property (e.g., EPA TAG or TOSC support).

(b) Volunteer sources from within the community (e.g., local universities or local or state environmental organizations).

- (c) Contractors already working at the FUDS property.

Upon determining that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the FUDS property, the RAB/TRC must notify the USACE district Commander of its intention to pursue TAPP. The community members of the RAB/TRC then define the scope of the independent technical assistance, determining that it meets a genuine need of the RAB/TRC, meets the eligibility criteria, and is limited in scope to the available resources.

(2) Step Two – Application.

(a) Once the scope of the proposed TAPP project has been defined, the RAB/TRC community members must prepare and submit a formal application which specifies the type of assistance required and, if possible, one or more sources for this assistance. USACE districts should contact CEMP-RF for a copy of the latest form to be used for this purpose. The RAB or TRC may outline additional criteria, such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities for USACE to consider in selecting an assistance provider. The project description prepared by the RAB/TRC should contain sufficient detail to enable USACE to determine the nature and eligibility of the project, identify potential providers, estimate costs, and prepare a statement of work (SOW) to begin the procurement process. The community members must identify a single POC for communication with the USACE district Commander's staff regarding the TAPP procurement process and confirm that the project is the result of a majority decision by the community members of the RAB/TRC.

(b) The USACE RAB Co-Chair reviews the application to ensure that it is complete, describes an eligible project, and will likely be within the TAPP funding limit (see paragraph 3-10b). The USACE Co-Chair, in coordination with the RAB/TRC, prepares a draft SOW. The TAPP application, with the draft SOW, is forwarded to the USACE district Commander for approval.

(3) Step Three – Approval.

(a) The USACE district Commander or other appropriate decision authority will consider the TAPP request and approve or deny the TAPP application. As part of the approval process, the district Commander determines that the proposed project conforms to eligibility requirements, that the community has sought other avenues of assistance prior to applying for the TAPP, and that funding is available for a TAPP. When other avenues for assistance exist, but the community members desire an independent provider, the USACE district Commander must assess whether or not providing assistance will enhance the environmental restoration program and improve

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community support. TAPP applications that fail to meet the requirements relating to relevance to DOD restoration activities at the FUDS property will be denied.

(b) If the TAPP application is approved, the USACE district Commander forwards the request to the USACE district Contracting Officer for procurement. If the application is denied, the USACE district Commander must inform the RAB/TRC, indicate the reason for denial, recommend alternatives for achieving the desired assistance, and describe procedures to appeal the decision IAW paragraph 3-8e. The RAB/TRC may then decide whether to reapply or to appeal the USACE district Commander's decision.

(4) Step Four – Procurement. The USACE district Commander forwards the approved TAPP request to the USACE district procurement and contracting office. Procurements generally will be conducted as purchase orders IAW the Federal Acquisition Regulations (FAR) (48 CFR Part 13) and will comply with all requirements for full and open competition under the Competition in Contracting Act (10 USC 2304). The district procurement and contracting office will award and manage the contract to the selected assistance provider. The USACE Co-Chair of the RAB will serve as a liaison between the RAB community members and the district procurement and contracting office and will also serve as the Contracting Officer's Representative (COR).

(a) Finding a Potential Assistance Provider. The RAB/TRC community members may nominate potential assistance providers for the proposed TAPP project on the TAPP application. The USACE Contracting Officer may add these providers to the bidders mailing list. The RAB/TRC may have specific criteria in mind for the provider to demonstrate. Potential assistance providers must have:

- Demonstrated knowledge of hazardous or toxic waste issues and/or laws.
- Academic training in a relevant discipline.
- Ability to review, understand, and put technical information into terms understandable to lay persons.

Potential assistance providers should have:

- Experience working on hazardous or toxic waste problems.
- Experience in making technical presentations.
- Demonstrated writing skills.
- Previous experience working with community groups.

Community members of the RAB/TRC may suggest additional provider qualifications as part of the TAPP application. These may be used by USACE in the procurement process to identify the most appropriate provider. If the USACE Contracting Officer selects a provider not nominated

by the RAB/TRC, USACE must so inform the RAB/TRC and determine if they wish to proceed with the procurement.

(b) Simplified Acquisition Procedures (SAP). Because of the dollar levels involved in the procurement, the USACE district procurement and contracting office will generally use SAP to process the approved TAPP request as a purchase order. The benefits of using SAP are that solicitations can be shorter, contracting methods more direct, payment methods quicker, and documentation generally less burdensome. Factors other than price, such as prior performance or the demonstration of other specialized skills, may be considered and require only a minimal amount of documentation when SAP is used.

(c) Independent Government Cost Estimates. The independent Government cost estimate is developed by the COR based on the SOW. The USACE district procurement and contracting office must be aware of the source and limits of funding for TAPP projects (see paragraph 3-10). The RAB/TRC should be notified if the Government cost estimate for a proposed project exceeds the planned budget. In such instances, unless a waiver to the current policy limits on TAPP expenditures (see paragraph 3-10b) were approved, the procurement as proposed would not proceed. Given this circumstance, the RAB/TRC community members might wish to modify the SOW so that it more closely matches the available resources and resubmit the procurement request.

(d) COR. The COR directs the technical aspects of the contract and assesses the performance of the contractor, with input from the community, at the conclusion of the project. The USACE RAB Co-Chair will in most instances perform the function of the COR. It is important to remember that, although the RAB/TRC initiates the project and has a significant stake in its outcome, the contract is a Government contract, and the contractor must receive direction from the Government Contracting Officer. The COR must ensure that the contractor understands this relationship. Likewise, it is important that the RAB/TRC community members understand their relationship to the contractor. New tasks or changes to the work schedule or scope must come through the COR to the USACE district Contracting Officer because the community members of the RAB cannot task the contractor directly. Communications between the community members of the RAB and the contractor could lead to problems if the community members direct the assistance provider to conduct work not identified in the purchase order agreement. Therefore, either the USACE Contracting Officer or the COR must be present during any such discussions.

(5) Step Five – Assistance Provided. When the Government purchase order is awarded, the selected independent contractor will work with the community members of the RAB/TRC through the COR to provide the requested assistance.

(6) Step Six – Reporting. Each RAB/TRC that receives TAPP must submit a report to the USACE district procurement and contracting office at project completion. This report must

indicate, by fiscal year, the amount of TAPP funds obligated and evaluate for each project whether or not the TAPP assisted the community in participating in the restoration program. The final report must document TAPP project activities over the entire period of support and must describe achievements with respect to stated TAPP project purposes and objectives. Additional reporting requirements for the USACE district Commander are explained in paragraph 3-11.

e. Appeals.

(1) Disagreements may occur between the USACE staff and the RAB/TRC community members at several points during the TAPP process. For instance, the USACE district Commander may deny an application for TAPP because the budget cannot accommodate the cost near the end of a fiscal year, or the proposed TAPP project may be ineligible because it does not meet the eligibility criteria, or the RAB/TRC community members may dispute the findings of the USACE district Contracting Officer regarding the proposed provider. It is in the best interest of USACE and the community members of the RAB/TRC to avoid disputes and to work cooperatively to resolve potential differences of opinion. In the event that a dispute arises, the community members of the RAB/TRC may wish to appeal the USACE district Commander's decision. The following general operating principles apply when a RAB/TRC wishes to appeal a decision:

(a) Inherently governmental functions, such as the procurement process governed by the FAR, are not subject to appeal.

(b) Eliminating disagreements and roadblocks should be emphasized.

(c) Appeals should be resolved quickly.

(d) Appeals should be resolved at the lowest level possible.

(e) Appeals should be resolved within the Army.

(2) Typically, the appeals process begins with the USACE district Commander (15-day review); then to the USACE MSC Commander (30-day review); then to the Director of Military Programs, HQUSACE (30-day review); and, finally, through the Director of Environmental Programs of the Army to the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health (DASA(ESOH)) (30-day review) (see figure 3-1). For all USACE RABs/TRCs, DASA(ESOH) is the last authority for any appeal concerning TAPP.

(3) Ground rules, as they relate to the appeals process, include:

(a) The majority of RAB/TRC community members must agree to the appeal.

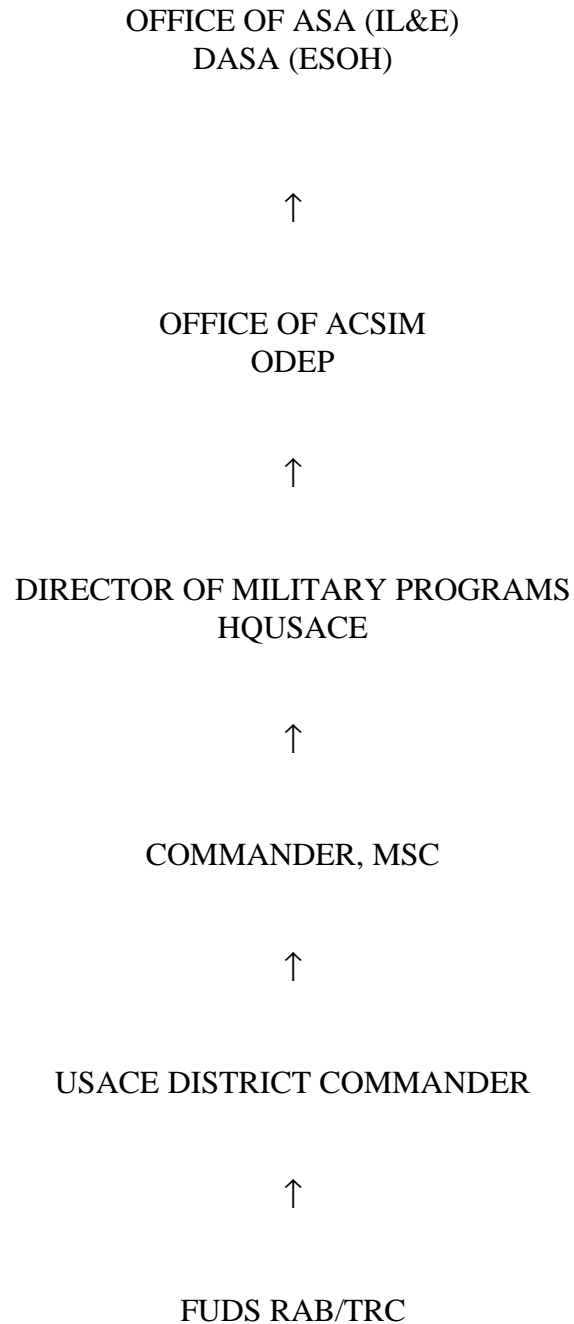


Figure 3-1. Chain of Command for RAB Appeals

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(b) The RAB/TRC must appoint a single spokesperson.

(c) Written justification, submitted to the USACE district Commander, must accompany the appeal.

(d) If the USACE district Commander chooses not to support the appeal, he or she must endorse the appeal to the next higher level of the chain of command, with rationale for denying the appeal.

(e) Appeals must follow the appeals process and cannot skip or circumvent command levels. At each command level, both the appeal and each Commander's endorsement must be considered.

These ground rules are designed to speed the appeals process and to ensure that the appeal has the support of the majority of RAB community members.

3-9. Additional Technical Support. To ensure that RAB/TRC members clearly understand the issues involved in environmental cleanup activities, technical support is available from the USACE district staff and USACE, MSC, and USAEC contractual support. Examples of the types of technical support that could be provided include updates and status reports on ongoing environmental restoration efforts, explanation of technical and risk assessment data, explanation of the relative risk site evaluation procedures and results, planning and facilitating FUDS property visits, and preparation of briefing packages and handouts. Technical support is also available from MSCs, USAEC, the U.S. Army Technical Center for Explosives Safety, the U.S. Naval Explosive Ordnance Disposal Technical Center, EPA (TAG and TOSC support, for example), other Federal agencies, and state regulatory agencies. The following Army agencies are familiar with RABs/TRCs and the TAPP program and are able to provide assistance to the USACE district Commander.

a. USACE MCXs. Technical support is available to the RAB/TRC from the USACE MCXs for HTRW and OE. These organizations may provide in-house and contractual support to explain technical data and related issues to the RAB/TRC. In many cases, the restoration contractor already performing work at the FUDS property can provide technical support. The USACE district Commander should determine the type and level of contractual support available from current contracts when providing technical support to the RAB/TRC.

b. U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM). USACHPPM also has a staff of environmental health professionals (including scientists, geologists, engineers, and physicians) to assist a RAB. The USACE district Commander can directly contact USACHPPM to request support. This support can be provided by reimbursable funds, if needed. The USACHPPM's Environmental Health Risk Assessment and Risk

Communication Program can provide support to RABs by providing assistance on technical issues regarding human health and environmental risk. The USACHPPM program can also provide risk communication support to RABs through their consultation and training services, which include advisory, technical, and logistical support of public meetings, public exhibits, and open dialogue sessions.

3-10. Funding. RABs may be eligible for TAGs from EPA to cover costs associated with NPL FUDS properties. For non-NPL FUDS properties, RABs may be eligible for TOSC support from EPA. RAB members or other community groups may form an organization and apply for a TAG or TOSC to obtain funding for technical support. Costs associated with administrative support to RABs/TRCs and TAPP are eligible for funding from the FUDS Environmental Restoration Account. There is no separate centrally funded RAB/TRC and TAPP account. USACE MSC Commanders will program and budget RAB and TAPP support from their allocation of Program Objective Memorandum FUDS funds.

a. RAB/TRC Support. The USACE district Commander will program funding to establish and operate RABs/TRCs and for the TAPP program. Costs incurred by the USACE district Commander's staff to operate RAB/TRC and provide TAPP are considered RAB administrative support and are funded as project management funds. The contractual support and other authorized RAB/TRC and TAPP execution will be recorded by using the Army Management Structure Code, i.e., 493008.2A for RAB, 493008.2B for TRC, and 493008.2C for TAPP. The Project Execution and Accounting Report will be recorded under the FUDS Environmental Restoration Account. The USACE district Commander's staff should review the definition of RAB/TRC and TAPP administrative funding when identifying RAB funding requirements and outlays. The following are the RAB/TRC eligible and ineligible expenditures:

(1) Eligible RAB/TRC Expenditures.

(a) Activities directly related to the establishment and operation of a RAB will qualify as administrative expenses. Such expenses include member recruitment; meeting announcements; meeting logistics; development of mission statements and operating procedures; facilitators (including translators); preparation of meeting agendas, materials, and minutes; document reproduction for RAB members; maintenance of a RAB mailing list and mailing of relevant information; and orientation training.

(b) Contractor expenses specifically in administrative support of the RAB.

(2) Ineligible RAB/TRC Expenditures.

(a) RAB administrative expenses do not include community involvement expenses, such as preparation of fact sheets or other information materials for public distribution, costs of public

meetings, mailings, responding to public comments on the restoration program, or repository costs. Also, expenditures/outlays to determine the interest of a community in establishing a RAB/TRC are considered to be project management expenses and are not to be charged to RAB/TRC accounts.

(b) Salaries for DOD personnel, and temporary duty travel of DOD personnel in connection with RAB/TRC and TAPP activities. These expenditures must be captured as project management costs.

(c) Dedicated equipment, such as computers, software, facsimile machines, telephone lines or access, or electronic mail for RAB community members.

(d) Renting dedicated office space for and providing administrative support services to RAB community members.

(e) Printed stationary and personal business cards.

(f) Temporary duty travel, conference attendance, or conference fees for RAB community members.

(g) Compensation to RAB members for meeting attendance, work hours lost, time invested in reviewing and commenting on documents, travel to RAB meetings, or long distance telephone calls.

b. TAPP Support.

(1) Funding for independent technical assistance for RAB/TRC community members under the TAPP program may be necessary on a case-by-case basis. There is no separate appropriation for TAPP. TAPP projects will be funded from the USACE MSC's allocation of FUDS funds. TAPP is not a grant or direct funding to the RAB/TRC, nor is it a blank check to use at the RAB's/TRC's discretion.

(2) Current policy limits TAPP expenditures for each FUDS property with a RAB/TRC to an annual maximum of \$25,000 or 1 percent of the cost to complete restoration activities (studies, design, cleanup, and operation and maintenance costs) for the FUDS property at the time TAPP is requested, whichever is less, with a lifetime maximum of \$100,000 per FUDS property.

(3) To obtain necessary funding, the USACE district Commanders must program appropriate TAPP requirements. Each PM for the FUDS property with a RAB/TRC and TAPP must determine his or her funding requirements in the budget cycle and program accordingly in the FUDS data base and/or workplans.

(4) Waivers to the \$100,000 total and \$25,000 annual funding limits may be approved by DASA (ESOH). Waiver requests must follow the normal appeals process (see paragraph 3-8e). Requests for waivers are initiated by the RAB/TRC community members and forwarded by endorsement with recommendations by the USACE district Commander through the chain of command to DASA(ESOH). The following considerations may affect the granting of a waiver:

- (a) The size or complexity of the FUDS restoration project.
- (b) The nature and extent of contamination.
- (c) The level of restoration activity at the FUDS property.
- (d) The size and diversity of the affected community.
- (e) Funding received by the community from other Federal sources.

c. Public Participation. Public participation on the RAB/TRC and in the TAPP process will be strictly voluntary, with the exception that state representatives on the RAB may receive reimbursements authorized under the Defense and State Memorandum of Agreement process. USACE will not provide financial support to the public members for their services, nor will members be compensated for work hours lost or time invested in review and commentary on documents. The USACE RAB Co-Chair must ensure that the public clearly understands this fact during the member recruitment process and prior to any final commitment by a public representative to serve on the RAB/TRC or to participate in the TAPP process.

3-11. Reporting. DOD's Management Guidance for the Defense Environmental Restoration Program requires that USACE report on the RAB/TRC and TAPP activities through the Army to DUSD(ES). The USACE district Commander will provide the following information and reports through the relevant MSC to HQUSACE (ATTN: CEMP-RF). Table I-1 provides the reporting requirements summary.

a. RAB Establishment and Activities.

(1) The National Defense Authorization Act for Fiscal Year 1996 requires that DOD provide an annual RAB report on funding and activities, including TAPP. To meet these reporting requirements, HQUSACE summarizes RAB and TAPP data at the Army's semiannual In-Process Reviews with the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)). MSCs are required to summarize the status of RABs and TAPPs during the semiannual FUDS Program Execution Reviews and submit these summaries to HQUSACE IAW table I-1.

(2) Army policy is that all FUDS properties with a restoration program determine community interest in establishing and participating in a RAB. HQUSACE requires that only RABs be established and that existing TRCs be converted to RABs. The USACE district Commander is, therefore, required either to establish a RAB at each FUDS property requiring cleanup or document why a RAB cannot be established. Exceptions to establishing a RAB at the FUDS property may be made in instances where the FUDS property owner objects to the establishment of a RAB, or the FUDS project duration is so short (less than 1 year from an investigation phase to a remedial/removal response completion phase) as to make RAB establishment infeasible, or the FUDS property is in a remote location with no community nearby, or all major environmental cleanup decisions for all FUDS projects for the entire FUDS property have already been made. If a RAB is not being established, the rationale for not doing so will be documented in an MFR which must be signed by the USACE district Commander. A copy of this MFR will be forwarded to the relevant MSC and HQUSACE (ATTN: CEMP-RF).

(3) DUSD(ES) requires reporting on the RAB and the TAPP data. The data will be submitted to HQUSACE biannually by MSCs per table I-1. The data will be provided in tables I-1 through I-9.

b. TAPP.

(1) When the USACE district Commander provides support to a RAB or TRC through the TAPP program, there are two distinct reporting requirements. The RAB/TRC is required to submit a report (see paragraph 3-8d(6)). In addition, the USACE district Commander will report on the results of the TAPP project. The district Commander's report must be based on the RAB/TRC report to the USACE Contracting Officer, and it must contain the following information:

- (a) Name of the FUDS property and its identification number.
- (b) Name of the assistance provider.
- (c) Cost of the project.
- (d) Duration of the project.
- (e) Short description of the scope of the project.
- (f) Short description of the results of the project.
- (g) Discussion of any technical actions taken because project results conflicted with previous USACE views.

- (h) RAB/TRC satisfaction with the project.
 - (i) Discussion of any problems/issues that came up during the TAPP process.
 - (j) Discussion of the resolution of any problems/issues that came up during the TAPP process.
- (2) The USACE district Commander will submit this report, along with the report submitted by the RAB/TRC, through the relevant MSC to HQUSACE (ATTN: CEMP-RF). HQUSACE will submit all TAPP reports to DUSD(ES) at semiannual In-Process Reviews. The results of a TAPP project should be shared with the community as a whole, and the TAPP report should be retained in the Administrative Record for the FUDS property restoration program.
- c. RAB Disestablishment. The USACE district Commander may consider disestablishing a RAB/TRC at the FUDS property under the following situations:
- (1) When there is no longer a need for the level of community participation in the environmental restoration program that is usually provided by a RAB/TRC.
 - (2) The FUDS property no longer has an environmental restoration program, i.e., all known contamination at the FUDS property has been eliminated.
 - (3) All environmental restoration remedies are in place and are operating properly and successfully.
 - (4) There is no longer sufficient, sustained community interest.

If the RAB is disestablished, the rationale for doing so will be documented in an MFR which must be signed by the USACE district Commander. A copy of this MFR will be forwarded to the relevant MSC and HQUSACE (ATTN: CEMP-RF).

3-12. Community Involvement. The RAB should encourage the public to participate in discussions throughout the environmental restoration process. Many communication techniques are available for use in encouraging public involvement. The RAB should work closely with the geographic district PAO to ensure continued public involvement by means of the following:

- a. A CRP should be in place to specify a plan of action for keeping the community involved and informed. (See paragraphs 2-7d through k for discussion of CRP content.)
- b. If a CRP already exists for a FUDS project, that plan should be amended by inserting RAB information (such as meeting minutes, descriptions of public involvement activities, etc.) as

addenda to the plan. The plan and addenda should be placed in the information repositories. When the FUDS project is nearing completion, the basic plan should be revised to incorporate these addenda.

c. A mailing list of RAB members, elected officials, the local media, community groups, members of the public, and USACE POCs (technical and public affairs) should be developed and maintained. Public notices, fact sheets, and other handout materials should be sent to all individuals on the mailing list. (Note that the Privacy Act prohibits release of names, addresses, and phone numbers without prior consent.)

d. Information repositories should be established in the local area (at or near the FUDS property). These repositories, generally located at libraries or other publicly accessible locations, should contain documents reflecting ongoing environmental restoration activities, e.g., EE/CA reports, the RI/FS, proposed plans, the CRP, RAB meeting minutes, Public Notices, public comments and responses to those comments, etc.

e. The PM will solicit and respond (in writing) to comments. Public comment periods will be provided as specified in law and applicable regulations. In general, all draft and final documents distributed to the RAB for review and comment should be made available to the general public for a minimum of 30 days before comments are due. For documents where a review period is shorter than 30 days for regulatory staff, this same shorter review period would also apply to the review by the RAB and community members. Every effort should be made to provide the RAB and community members with an adequate review period. Special-focus meetings of the RAB may be called to review and comment on key documents. Formal, written responses should be prepared to all substantive comments received from the RAB and the general public.